

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

PREFERRED CAPITAL FUNDING,  
NEVADA, LLC,

Plaintiff,

v.

Case No. 1:19-cv-06245  
District Court Judge Virginia M. Kendall

JEFF KAHN, PHILLIP TIMOTHY HOWARD and  
HOWARD & ASSOCIATES, P.A.,

Defendants.

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**DEFENDANTS' PHILLIP TIMOTHY HOWARD AND HOWARD &  
ASSOCIATES, P.A., MOTION FOR SANCTIONS**

COME NOW Defendants Phillip Timothy Howard, and Howard & Associates, P.A., (hereinafter "Defendants") through undersigned, pursuant to Federal Rule of Civil Procedure 11(b) and (c), submits the following Motion for Sanctions, after providing the required 21-day notice, and as grounds would assert:

**MOTION FOR SANCTIONS**

Defendants have provided documentary evidence that Plaintiff's Complaint is violative of Federal Rule of Civil Procedure 11(b). The evidence is found in Defendants' Motion to Dismiss served on October 18, 2019, and Supplements to Motion to Dismiss served on November 8, 2019, and November 15, 2019. These filings are replete in demonstrating that there is no factual or legal basis for the Complaint.

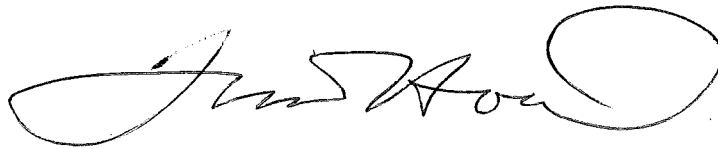
1. Dr. Koberda is an NFL Concussion Settlement Claims MAF and BAP Certified neurologist, thus, a claim of fraud that he was misrepresented as being NFL Concussion Settlement Claims MAF and BAP Certified neurologist is factually impossible;
2. Undisputable evidence demonstrates that 99% of all claimants will be paid under the 65-year life of the program;
3. More and more of the borrowers identified by Plaintiff are receiving compensation totaling \$ millions, with 23 of the 31 independent and individual loans made over an 18-month period, listed as either paid off or in the process of being paid off, 7 of the loans listed are not clients, and 4 loans made by Plaintiff and in Defendant's files are not listed in the Complaint. Thus, the loans were not done in bulk, but individually and independently reviewed and analyzed by Plaintiff over an 18-month period, and thus far, 23 out of 31 loans are paid or are being paid;
4. Defendants have no control over the delays and changes in the NFL Concussion Settlement Claims standards, such as AAP, AAPC, Heaton Norm applications, mass audits of every submitting law firms' claims amounting to 56% of all claims being held up for over a year, or any of the internal changes of the NFL Concussion Settlement Claims administrator

- processes, or subsequent rulings by Judge Brody and the Special Master that modify the claims operations and review standards;
5. Defendants are neither NFL Concussion Settlement Claim certified neurologists, neuropsychologists, nor clinical dementia rating professionals, and never claimed to be;
  6. Defendants have no control over clients that choose different counsel;
  7. Defendants advanced the interests of Plaintiff by joining co-counsel with successful experience in processing claims; and
  8. Defendants did not in any way prepare the medical reports relied upon by the Plaintiff.

This Motion for Sanctions is being provided to Plaintiff's counsel and the 21-day notice begins from the date of service originally noticed on October 18, 2019, and the Complaint must be withdrawn and dismissed. Motion for Sanctions noticed on October 18, 2019 and November 8, 2019, attached hereto as Cumulative Exhibit A.

**WHEREFORE**, for the foregoing reasons, Defendants request that this Court grant sanctions pursuant to Federal Rule of Civil Procedure 11(c), as Plaintiff was served the 21-day notice that if Plaintiff did not dismiss this frivolous Complaint within 21-days of the notice, that this Motion for Sanctions would ensue.

Respectfully submitted on this 6<sup>th</sup> Day of December, 2019.

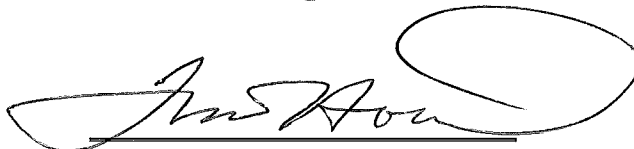


TIMOTHY HOWARD, J.D., PH.D.  
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Facsimile: (850) 216-2537  
[Tim@HowardJustice.com](mailto:Tim@HowardJustice.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6<sup>th</sup> day of December 2019, a copy of the foregoing was served by email to the following counsel of record:

Katherine Schoon  
Amy Galvin Grogan  
Grogan, Hesse & Uditsky, P.C.  
340 W. Butterfield Rd., Suite 2A  
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Tim Howard, Esq.,

# **CUMULATIVE EXHIBIT A**

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**MOTION FOR SANCTIONS**

Defendants have provided documentary evidence that Plaintiff's Complaint is violative of Federal Rule of Civil Procedure 11(b). The evidence is found in Defendants' Motion to Dismiss served on October 18, 2019. This Motion to Dismiss is replete in demonstrating that there is no factual or legal basis for the Complaint.

1. Dr. Koberda is an NFL Concussion Settlement Claims MAF and BAP  
Certified neurologist;

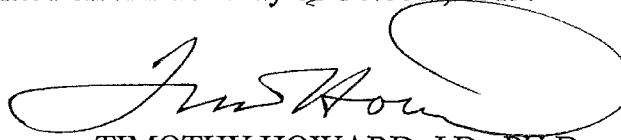
2. Undisputable evidence demonstrates that 99% of all claimants will be paid under the 65-year life of the program;
3. More and more of the borrowers identified by Plaintiff are receiving compensation totaling \$ millions;
4. Defendants have no control over the delays and changes in the NFL Concussion Settlement Claims process;
5. Defendants are not NFL Concussion Settlement Claim certified neurologists and never claimed to be,
6. Defendants have no control over clients that choose different counsel;
7. Defendants advanced the interests of Plaintiff by joining co-counsel with successful experience to process claims; and
8. Defendants did not prepare the medical reports relied upon by the Plaintiff.

This Motion for Sanctions is being provided to Plaintiff's counsel and the 21-day notice begins from the date of service, and the Complaint must be withdrawn and dismissed.

**WHEREFORE**, for the foregoing reasons, Defendants request that this Court grant sanctions pursuant to Federal Rule of Civil Procedure 11(c), if Plaintiff does

not dismiss this frivolous Complaint within the next 21 days.

Respectfully submitted on this 18<sup>th</sup> Day of October, 2019.



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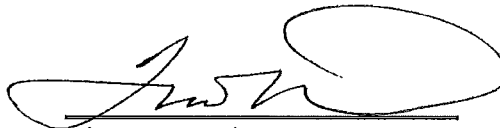
Facsimile: (850) 216-2537

Tim@HowardJustice.com

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I hereby certify that on this 18<sup>th</sup> day of October 2019, a copy of the foregoing  
was served by email to the following counsel of record:

Katherine Schoon  
Amy Galvin Grogan  
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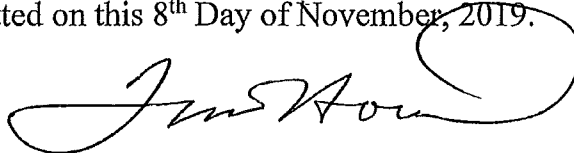
1. Dr. Koberda is an NFL Concussion Settlement Claims MAF and BAP Certified neurologist;
2. Undisputable evidence demonstrates that 99% of all claimants will be paid under the 65-year life of the program;
3. More and more of the borrowers identified by Plaintiff are receiving compensation totaling \$ millions;
4. Defendants have no control over the delays and changes in the NFL Concussion Settlement Claims process;
5. Defendants are not NFL Concussion Settlement Claim certified neurologists and never claimed to be,
6. Defendants have no control over clients that choose different counsel;
7. Defendants advanced the interests of Plaintiff by joining co-counsel with successful experience to process claims; and
8. Defendants did not prepare the medical reports relied upon by the Plaintiff.

This Motion for Sanctions is being provided to Plaintiff's counsel and the 21-day notice begins from the date of service, and the Complaint must be withdrawn and dismissed.

**WHEREFORE**, for the foregoing reasons, Defendants request that this Court grant sanctions pursuant to Federal Rule of Civil Procedure 11(c), if Plaintiff does

not dismiss this frivolous Complaint within the next 21 days.

Respectfully submitted on this 8<sup>th</sup> Day of November, 2019.

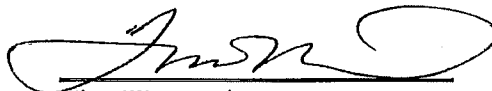


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